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ATTORNEYS FOR PLAINTIFF  
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BROOKLYN, NEW YORK 11215**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Case No.

XL INSURANCE COMPANY, (AXA)

Plaintiff,

vs.

COMPLAINT

MEDITERRANEAN SHIPPING COMPANY S.A.  
d/b/a MSC.

Defendant.

\_\_\_\_\_  
X/

**COMPLAINT**

NOW COMES Plaintiff, XL Insurance Company, hereinafter referred to as AXA, by its counsel John F. Ryan Counselor At Law, and complaining of the Defendant, MEDITERRANEAN SHIPPING COMPANY S.A. d/b/a MSC.:

1. Plaintiff, at all relevant times, is a Marine Cargo Underwriter and Insurance Company with an office and place of business at 200 Liberty Street, 25<sup>th</sup> Fl., New York, NY 10281. That Plaintiff did issue to Lenzing Fibers Inc., a policy of marine cargo insurance which provided insurance coverage for, among other things, the shipment and cargo described more fully in this complaint. That Plaintiff is fully subrogated to the loss more fully described herein and that Plaintiff is entitled to pursue the cause of action set forth herein.

2. Defendant, Mediterranean Shipping Company S.A. dba MSC and hereinafter referred to as MSC is believed to be a foreign corporation or similar entity formed under the laws of a foreign country with an office c/o Mediterranean shipping Company (USA) Inc. at 420 5<sup>th</sup> Ave., 8<sup>th</sup> Floor New York, N Y 10018-2702.
3. At all times material, Defendant MSC held itself out as a carrier of goods by sea for hire and that on or about September 8, 2019 the defendant issued bill of lading No. MEDUBX064380 for shipment 630 Bales of Lyocell Bright in NINE (9) containers including Containers No. MSCU9821528 containing 70 Bales, No. TCLU 5629890 containing 70 Bales and No. MSCU5122878 containing 70 Bales SUDU9804204. That all Nine containers and 630 Bales of Lyocell were stowed in on the MV MAERSK KOLKATA No. 936 W at the Port of Mobile, Alabama for the voyage from Mobile, Alabama to Haiphong, Viet Nam.
4. This is an action within the admiralty and maritime jurisdiction of this Court as contemplated by 28 U.S.C. Sect. 1333 and Rule 9(h) of the Federal Rules of Civil Procedure.
5. This matter is properly before this Court based upon the forum selection clause contained in the General Terms and Conditions incorporated in bills of lading issued by defendant MSC.
6. Plaintiff's business is, among other things, to issue marine insurance policies to provide insurance coverage for damages to shipments of merchandise while in transit, including shipments of Bales of Lyocell Bright. That the insured Lenzing Fibers, Inc. presented to plaintiff a claim for the damages described in this complaint. The plaintiff was obligated under the terms of the insurance policy issued by plaintiff to pay and it did pay the claim presented by Lenzing Fibers, Inc. After payment of said claim plaintiff,

AXA became and is now entitled to bring this action as subrogated underwriter and does bring it on its' own behalf as well as on behalf of the insured Lenzing Fibers, Inc. as their interest may appear.

7. That on or about September 8, 2019 defendant MSC issued bill of lading No MEDUBX064380 for shipment of 630 Bales of Lyocell Bright in nine (9) containers, including Containers No. MSCU9821528 containing 70 Bales, No. TCLU 5629890 containing 70 Bales and No. MSCU5122878 containing 70 Bales SUDU9804204 for voyage No. 936 W from Mobile, Alabama to Haiphong, Viet Nam.
8. That on or about November 4, 2019 defendant, MSC or its agent failed to deliver to plaintiff or their agents the full shipment of 630 Bales of Lyocell Bright identified in the referenced bill of lading in good order and condition and only delivered 420 Bales of Lyocell Bright in good order and condition. The other 210 Bales of Lyocell Bright were delivered in a damaged condition not in accordance with the terms and conditions of the bill of lading issued by defendant MSC.
9. That on or about November 13, 2019 MSC was put on notice that Containers No. MSCU9821528 containing 70 Bales, No. TCLU 5629890 containing 70 Bales and No. MSCU5122878 containing 70 Bales SUDU9804204 were not delivered in the same good order and condition as received by defendant but in a damaged condition and that plaintiff's damages were in the amount of \$250,000.00 and that it was defendant's legal obligation to pay those damages.
10. That defendant was legally obligated to care for and protect plaintiff's assured Lenzing Fibers, Inc shipment of 630 Bales of Lyocell Bright in NINE (9) containers during the transit identified on the referenced bill of lading, and to deliver the shipment of in the same good order and condition as when the shipment was received by defendant, and that defendant failed to protect plaintiff's shipment of 630 Bales of Lyocell Bright during the referenced voyage. As a result of defendant's breach of contract and

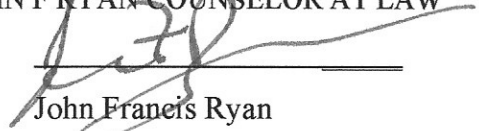
negligence plaintiff has suffered damages in the amount of \$250,000.00 plus costs and interest.

11. To date, defendant has failed to make any payment to plaintiff for the damages suffered as a result of defendant's breach of maritime contract and or negligence.
12. In addition to the above amount of \$250,000.00 plaintiff is entitled to interest, costs and fees in amounts which will be proved at trial.

**WHEREFORE**, Plaintiff requests an entry of judgment against the named Defendant for the aforesaid damages, plus all pre and post judgment interest, costs and attorney fees and for such other and further relief deemed just and proper.

Date: JUNE 1, 2021

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